

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALYSON HERFERT, TALANA WILEY,)
SHANNON GORDNER, KATHRYN DE)
PEUTER, BECKY KUHL, ALANNA)
WASKO, and DENIZ ZOELLER, on behalf of)
themselves and all others similarly situated,)
Plaintiffs,)
v.)
CRAYOLA LLC,)
Defendant.)
No. 2:11-cv-1301-JCC
**AMENDED REVISED ORDER
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS AND
PRELIMINARILY APPROVING OF
SETTLEMENT, APPROVING OF
NOTICE PLAN AND NOTICE
ADMINISTRATOR AND
APPOINTING LEAD CLASS
COUNSEL**

In this action, Plaintiffs,¹ on behalf of themselves and all others similarly situated (the “Settlement Class”), assert claims against Defendant Crayola LLC. Crayola LLC has denied these claims and denies all liability. Plaintiffs maintain that their claims have merit and that a class or classes would be certified in this action.

The Parties presented a Motion for Preliminary Approval of Proposed Settlement and a Settlement Agreement. The settlement was negotiated, and consented to, on behalf of the

¹ Alyson Herfert, Talana Wiley, Shannon Gordner, Kathryn De Peuter, Becky Kuhl, Alanna Wasko, and Deniz Zoeller (collectively “Plaintiffs”).

1 Parties and resolves all Claims against Crayola LLC arising out of the Action (as defined in the
2 Settlement Agreement). Notice of the proposed settlement has been served on the appropriate
3 federal and state officials by First Class Mail pursuant to the Class Action Fairness Act of 2005,
4 28 U.S.C. § 1715 (“CAFA”), within the time prescribed by CAFA.
5

6 Having considered the terms of the Settlement Agreement in light of the issues
7 presented by the pleadings, the record, the complexity of the proceedings, and the absence of any
8 evidence of collusion between Plaintiffs and Crayola LLC; and being preliminarily satisfied that
9 the Settlement Agreement is fair, reasonable and consistent with applicable laws; and being
10 satisfied that the proposed Notice of Class Action Settlement is adequate and sufficiently
11 informative as to the terms and effect of the proposed settlement and the conditional certification
12 of the Settlement Class, IT IS ORDERED THAT:

14
15 1. This Court has jurisdiction over the subject matter pursuant to 18 U.S.C. §
16 1332(d). This Court also has jurisdiction over all Parties, including all members of the Class, as
17 defined in Paragraph 5, below.

18
19 2. The Settlement Agreement is preliminarily and conditionally approved as
20 a fair, reasonable and adequate compromise of the risks of the Action, subject to further
21 consideration at the final approval hearing. Plaintiffs and Crayola LLC are authorized and
22 directed to take all actions that may be required prior to final approval by the Court of the
23 proposed settlement and compromises set forth in the Settlement Agreement.

24
25 3. For the purposes of conditionally certifying a settlement class, the Court
26 finds that the Settlement Class satisfies the requirements for certification under Rule 23(a). As

1 alleged in the Amended Complaint, the Settlement Class is numerous, common question of law
2 and fact predominate, Plaintiffs' claims and defenses are typical of the claims and defenses of the
3 Settlement Class, and Plaintiffs and their counsel have and will continue to fairly and adequately
4 asserted and protected the interest of all members of the proposed Settlement Class throughout
5 the settlement process.
6

7 4. The Court further finds, for the purposes of conditionally certifying a
8 settlement class, that the Settlement Class meets the requirements of Rule 23(b)(3) because
9 questions of law or fact common to class members predominate over any questions affecting
10 only individual members and that a class action is superior to other available methods for fairly
11 and efficiently adjudicating the controversy.
12

13 5. For the purpose of determining whether the proposed settlement embodied
14 in the Settlement Agreement should be approved as fair, reasonable and adequate, a Settlement
15 Class is preliminarily and conditionally certified under Rule 23(b)(3) of the Federal Rules of
16 Civil Procedure, as follows:
17

18 All persons in the United States and its territories who purchased or acquired
19 (including by gift) 2011 Washable Colored Bubbles, through the date of Final
20 Settlement Approval. Excluded from the Class are: (i) Crayola LLC, any entity in
21 which Crayola LLC has a controlling interest, and Crayola LLC's officers,
22 directors, legal representatives, predecessors, successors, and assigns; (ii)
23 affiliates of Crayola LLC, and those affiliates' officers, directors, legal
representatives, predecessors, successors, and assigns; and (iii) the judicial
officers to whom this case is assigned.
24

25 6. For purposes of the proposed settlement, Plaintiffs are designated as the
Class Representatives.
26

1 7. The Court conditionally approves of and appoints Keller Rohrback L.L.P.
2 as Lead Class Counsel for the Settlement Class to determine whether the proposed settlement
3 embodied in the Settlement Agreement should be approved as fair, reasonable and adequate.
4

5 8. The Long-Form of Notice of Class Action Settlement attached as Exhibit
6 A to the Settlement Agreement and the Summary Notice attached as Exhibit B to the Settlement
7 Agreement, as revised by the parties in their Joint Submission dated January 13, 2012 (Dkt. #31),
8 and as revised by the Court in this Order, are approved. Dissemination of the class notice as set
9 forth in the Notice Plan satisfies the requirements of due process and the Federal Rules of Civil
10 Procedure. The Long-Form Notice and Summary Notice will be published in accordance with
11 the terms of the Notice Plan set forth in the Settlement Agreement. Non-substantive changes
12 may be made to the Long-Form Notice and Summary Notice by agreement of Plaintiffs and
13 Crayola LLC without further order of this Court.
14

15 9. Crayola LLC is appointed as the Notice Administrator.
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17 10. A final approval hearing shall be held at 9:30 a.m. on April 24, 2012, to
18 determine whether the proposed settlement and compromise set forth in the Settlement
19 Agreement shall be approved finally by the Court. This hearing will be held at the United States
20 Courthouse, United States District Court, Western District of Washington, Seattle, WA, and the
21 Court will consider and determine:
22

23 A. whether the proposed settlement is fair, reasonable and adequate to members
24 of the Class and should be approved by the Court;
25

1 B. whether the proposed Settlement Class satisfies the applicable prerequisites
2 for class action treatment under Federal Rules of Civil Procedure 23(a) and
3 23(b)(3) for purposes of the proposed settlement;

4

5 C. whether Final Judgment should be entered, dismissing the Action as to
6 Crayola LLC, on the merits and with prejudice, and to determine whether the
7 release by the Class of the Released Claims, as set forth in the Settlement
8 Agreement, should be provided;

9

10 D. whether the Court should approve Class Counsel's application for an award of
11 attorneys' fees, costs and expenses;

12

13 E. whether the request by Class Counsel for Representative Plaintiff Awards to
14 the Class Representatives in the amount of \$1,500 each for their efforts in the
15 Action is reasonable and fair; and

16

17 F. such other matters as the Court may deem appropriate.

18 11. Any objection to this Settlement Agreement, including any of its terms or
19 provisions, must be filed with the Clerk of the District Court for the Western District of
20 Washington, Seattle Division in writing and postmarked no later than March 30, 2012. At the
21 same time as any objection is filed with the Court, a copy of the objection must also be sent to
22 Lead Class Counsel. Within two business days, Lead Class Counsel will forward all objections
23 to Defense counsel. Objections must include the objector's name, address, telephone number,
24 email address, signature, and the reasons for objecting to the Settlement. Settlement Class
25 Members objecting to the Settlement must provide a detailed list of any other objections

1 submitted by the objector, or the objector's counsel, to any class action settlements submitted in
2 any court in the previous five (5) years. If a Class Member intends to appear at the final
3 approval hearing through counsel, the attorneys representing the Class Member must also be
4 identified. All properly submitted objections shall be considered by the Court.
5

6 12. Any lawyer who intends to speak on behalf of an objector at the final
7 approval hearing shall enter a written notice of appearance of counsel with the Clerk of Court no
8 later than ten days prior to the Final Approval Hearing.
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10 13. Any Class Member who does not object in the manner set forth above
11 shall be deemed to have waived such objection and may not object to the fairness, adequacy or
12 reasonableness of the proposed settlement, the Final Approval Order and Judgment to be entered
13 approving the settlement, the release of claims, or the attorneys' fees and reimbursement of
14 expenses requested.
15

16 14. Class Members may also exclude themselves (opt out) from the Class. To
17 do so, they must submit a written Request for Exclusion to the Clerk of the Court for the Western
18 District of Washington, Seattle Division, and must also send a copy of the Request for Exclusion
19 to Lead Class Counsel. Any Class Member who does not exclude themselves from the
20 Settlement shall be bound by its terms.
21

22 15. The costs and expenses of preparing and publishing the Long-Form Notice
23 and the Summary Notice shall be paid by Crayola LLC pursuant to the terms of the Settlement
24 Agreement.
25

1 16. All proceedings in the Action, other than those necessary to carry out the
2 terms and conditions of this Order or the responsibilities incidental thereto, are stayed and
3 suspended until further order of the Court.
4

5 17. The Court may continue the final approval hearing without any further
6 notice other than an announcement at the final approval hearing.
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8 18. The Court may approve the Settlement Agreement with modifications as
9 approved by the parties to the Settlement Agreement without further notice to the Class.
10

11 19. All terms used, but not otherwise defined herein, shall have the meanings
12 ascribed to them in the Settlement Agreement.
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14 20. The Court retains exclusive jurisdiction over the Action to consider all
15 further matters arising out of or connected with the proposed settlement.
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17 DONE AND ENTERED INTO this 12th day of March 2012.
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Judge John C. Coughenour
United States District Court
Western District of Washington

1 By s/ John K. Sherk, III (per verbal authorization)

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AMENDED REVISED ORDER CERTIFYING SETTLEMENT
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APPROVING OF NOTICE PLAN AND NOTICE
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